

House Bill 1116 (AS PASSED HOUSE AND SENATE)

By: Representative Barnard of the 166th

A BILL TO BE ENTITLED
AN ACT

To amend Article 3 of Chapter 5 of Title 42 of the Official Code of Georgia Annotated, relating to conditions of detention, so as to increase the minimum reimbursement rate paid to counties for housing state inmates; to change certain provisions relating to transmittal of information on convicted persons and place of detention; to change the provision that allows convicted persons to remain in local jails under certain circumstances; to amend Article 9 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation management, so as to modify certain provisions relating to the "Probation Management Act of 2004"; to provide for related matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 3 of Chapter 5 of Title 42 of the Official Code of Georgia Annotated, relating to conditions of detention, is amended by revising subsection (c) of Code Section 42-5-51, relating to jurisdiction over certain misdemeanor offenders, designation of place of confinement of inmates, and reimbursement of counties for housing state inmates, as follows:

"(c) After proper documentation is received from the clerk of the court, the department shall have 15 days to transfer an inmate under sentence to the place of confinement. If the inmate is not transferred within the 15 days, the department will reimburse the county, in a sum not less than ~~\$7.50~~ \$25.00 per day per inmate and in such ~~an~~ additional amount as may be appropriated for this purpose by the General Assembly, for the cost of the incarceration, commencing 15 days after proper documentation is received by the department from the clerk of the court. The reimbursement provisions of this Code section shall only apply to payment for the incarceration of felony inmates available for transfer to the department, except inmates under death sentence awaiting transfer after their initial trial, and shall not apply to inmates who were incarcerated under the custody of the commissioner at the time they were returned to the county jail for trial on additional

1 charges or returned to the county jail for any other purposes, including for the purpose of
2 a new trial."

3 **SECTION 2.**

4 Said article is further amended by revising subsections (b) through (e) of Code Section
5 42-5-50, relating to transmittal of information on convicted persons and places of detention,
6 as follows:

7 "(b) ~~Except as otherwise provided in subsection (c) of this Code section, within~~ Within 15
8 days after the receipt of the information provided for in subsection (a) of this Code section,
9 the commissioner shall assign the convicted person to a correctional institution designated
10 by ~~him~~ the commissioner in accordance with subsection (b) of Code Section 42-5-51. It
11 shall be the financial responsibility of the correctional institution to provide for the picking
12 up and transportation, under guard, of the inmate to ~~his~~ the inmate's assigned place of
13 detention. If the inmate is assigned to a county correctional institution or other county
14 facility, the county shall assume such duty and responsibility.

15 (c) ~~In the event that the attorney for the convicted person shall file a written request with~~
16 ~~the court setting forth that the presence of the convicted person is required within the~~
17 ~~county of the conviction, or incarceration, in order to prepare and prosecute properly the~~
18 ~~appeal of the conviction, the convicted person shall not be transferred to the correctional~~
19 ~~institution as provided in subsection (b) of this Code section. In such event the convicted~~
20 ~~person shall remain in the custody of the local jail or lockup until all appeals of the~~
21 ~~conviction shall be disposed of or until the attorney of record for the convicted person shall~~
22 ~~file with the trial court an affidavit setting forth that the presence of the convicted person~~
23 ~~is no longer required within the county in which the conviction occurred, or in which the~~
24 ~~convicted person is incarcerated, whichever event shall first occur.~~

25 (d) ~~The department shall not be required to assume the custody of those inmates who have~~
26 ~~been convicted and sentenced prior to January 1, 1983, and because their conviction is~~
27 ~~under appeal have not been transferred to the custody of the department, until July 1, 1983.~~
28 The state shall pay for each such inmate not transferred to the custody of the department
29 from a county facility the per diem rate specified by subsection (c) of Code Section 42-5-51
30 for each day the inmate remains in the custody of the county after the department receives
31 the notice provided by subsection (a) of this Code section ~~on or after January 1, 1983.~~

32 ~~(e)~~(d) In the event that the convicted person is free on bond pending the appeal of his or
33 her conviction, the notice provided for in subsection (a) of this Code section shall not be
34 transmitted to the commissioner until all appeals of such conviction have been disposed of
35 or until the bond shall be revoked."

SECTION 3.

Article 9 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation management, is amended in Code Section 42-8-153, relating to administrative sanctions as an alternative to judicial modification or revocation of probation, as follows:

"42-8-153.

(a) The department is authorized to establish by rules and regulations a system of administrative sanctions as an alternative to judicial modifications or revocations for probationers who violate the terms and conditions of the sentencing options system established under this article. The department may not, however, sanction probationers for violations of special conditions of probation or general conditions of probation for which the sentencing judge has expressed an intention that such violations be heard by the court pursuant to Code Section 42-8-34.1.

(b) The department shall only impose restrictions which are equal to or less restrictive than the ~~initial~~ sanction cap set by the sentencing judge.

(c) The administrative sanctions which may be imposed by the department are as follows, from most restrictive to least restrictive:

(1) Probation detention center or residential substance abuse treatment facility;

(2) Probation boot camp;

(3) Probation diversion center;

~~(5)~~(4) ~~Options system~~ Department of Corrections day reporting center;

~~(4)~~(5) Intensive probation;

(6) Electronic monitoring;

(7) Community service; or

(8) Probation supervision."

SECTION 4.

Said article is further amended in Code Section 42-8-154, relating to preliminary hearings, as follows:

"42-8-154.

Whenever an options system probationer is arrested on a warrant for an alleged violation of probation, an informal preliminary hearing shall be held within a reasonable time not to exceed 15 days. However, a preliminary hearing is not required if the probationer is not under arrest on a warrant, ~~or~~ if the probationer has signed a waiver of a preliminary hearing, or if the administrative hearing referred to in Code Section 42-8-155 will be held within 15 days of arrest."

SECTION 5.

Said article is further amended in Code Section 42-8-155, relating to hearings regarding violations, by adding a new subsection to read as follows:

"(f) Official forms of the department for the recording of the findings, imposition of sanctions, or waiver of a hearing signed by the department hearing officer shall be filed with the clerk of the superior court having jurisdiction over the defendant."

SECTION 6.

Said article is further amended in Code Section 42-8-156, relating to the finality of the hearing officer's decision, as follows:

"42-8-156.

(a) The hearing officer's decision shall be final unless the options system probationer files for review with the senior hearing officer. The request for review shall be filed within 15 days of the issuance of the department's decision. The request for review shall not stay the department's decision. The senior hearing officer shall issue a response within seven days of receipt of the review request.

(b) The senior hearing officer's decision shall be final unless the options system probationer files an appeal in the sentencing court. Such appeal shall name the commissioner as defendant and shall be filed within 30 days of the issuance of the decision by the ~~department~~ senior hearing officer.

~~(b)~~(c) This appeal shall be first reviewed by the judge upon the record. At the judge's discretion, a de novo hearing may be held on the decision. The filing of the appeal shall not stay the department's decision.

~~(c)~~(d) Where the sentencing judge does not act on the appeal within 30 days of the date of the filing of the appeal, the department's decision shall be affirmed by operation of law."

SECTION 7.

Said article is further amended in Code Section 42-8-158, relating to application of the article only in counties with certified options system day reporting centers, as follows:

"42-8-158.

This article shall only apply in ~~counties that have an options system day reporting center certified by the department~~ judicial circuits where the department has allocated certified hearing officers.

SECTION 8.

Said article is further amended by repealing Code Section 42-8-160, relating to the repeal of the article, which reads as follows:

1 "42-8-160.

2 This article shall be repealed in its entirety on June 30, 2008."

3 **SECTION 9.**

4 Sections 1 and 2 of this Act shall become effective on January 1, 2010. The remaining
5 sections of this Act shall become effective on June 15, 2008.

6 **SECTION 10.**

7 All laws and parts of laws in conflict with this Act are repealed.